

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12753 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SUBHASH DINMOHAMMED LAKHANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12753 of 2004
MR HARESH N JOSHI for Petitioner No. 1
MS HANSA PUNANI ASST GOVT PLEADER for Respondent No. 1-3
MR JITENDRA MALKAN for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 09/12/2004

ORAL JUDGEMENT

Heard Mr.H.N.Joshi, learned counsel for the
petitioner and Ms.Hansa Punani, learned AGP for
respondent - State and detaining authority- District
Magistrate, Surat, so also, Mr.Malkan, learned Standing

Counsel for Central Government.

The Affidavit-in-reply filed on behalf of the respondent No.1 today is taken on record. Similarly, counter affidavit on behalf of Union of India is also on record.

.RS 2.

#. The petitioner detenu invoking jurisdiction of this Court under Article 226 read with Article 21 and 22 of the Constitution of India has prayed for issuance of a writ of Habeas Corpus and also prayed for quashing of the detention order dated 1st September, 2004 passed by the District Magistrate, Surat and detaining authority being No : PRV / ATK / RG.No.6 / 2004 under sub-section (2) of Section-3 of The Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act "). The order under challenge is assailed on various grounds and it is contended that the respondent No.2 - the District Magistrate has formulated irrelevant and non existence of grounds for detention without considering the activities of the petitioner.

#. As per the facts emerging from the grounds of detention conveyed to the detenu along with the order of detention when the same was executed, it reveals that the petitioner was involved in illegal activities of stealing, storing and selling blue kerosene required to be distributed under Public Distribution System and the present petitioner along with the persons named in the grounds for detention conveyed to the petitioner, was black marketing the blue kerosene under the guise of one licence / permit granted to one Raju Sohanlal Chandel to deal in the business of free sale white kerosene. The allegation against the present petitioner is that he has indulged in the activities of purchasing of blue kerosene at the rate of Rs.14/- per liter and selling it at the rate of Rs.20 to 22/- per liter to the traders of District Vadodara.

#. While developing the arguments, Mr.Joshi has mainly contended that the present petitioner should be at liberty on the ground of parity because similarly situated two detenus have been set at liberty by this Court. The grounds for detention are similar conveyed to the present petitioner to the grounds of other two detenus who have been set at liberty allowing their similar petitions by this Court. So the facts discussed and the reasons assigned by this Court, would positively help the present detenu.

#. It is not necessary according to Mr.Joshi to go into detail discussion and adopting reasons assigned by this Court in earlier decision given while disposing Special Civil Application No.11702 of 2004, the present petition should be allowed.

#. In support of this submission, Mr.Joshi has taken me through relevant para-6 of the decision in above cited petition dated 25th November, 2004. For convenience, I would like to reproduce the same.

"6. It is true that facts of two decisions that are placed before this Court by Mr.Prajapati are different to some extent but the observations of this Court in both these decisions (i) in the case of Prajapati Kohyabhai Ranchhodbhai vs. District Magistrate, passed in Special Civil Application No.7891 of 1998 on 12th February, 1999 (Coram : D.C.Srivastava, J.) and (ii) in the case of Jagdishchandra Pranalal Boriwal dated 19th June, 2002 passed in Special Civil Application No.3152 of 2002 (Coram : C.K.Buch, J.), are relevant and the findings recorded by this Court would positively help the present petitioner. It would be wrong to presume that even after suspension of registration, the petitioner would continue to deal with the activity as alleged in absence of any cogent evidence or material on record. The subjective satisfaction is required to be recorded in an objective manner and the Detaining Authority is not supposed to take decision either on conjectures or surmises and, therefore, this Court would like to quote relevant part of the decision of this Court in the case of Prajapati Kohyabhai (supra) :

"5. Another contention has been that without application of mind to the fact that the licence of the petitioner was already suspended vide order dated 1.7.1998, the impugned detention order was passed on 25.8.1998. It is not a case where the factum of suspension of licence was not in the knowledge of the detaining Authority. In para:13 of the grounds of detention, the detaining Authority clarified that the petitioner's licence was suspended on 1.7.1998 for a period of

90 days. Before expiry of suspension period the petitioner applied on 2.9.1998 that his licence be cancelled, but till date the Mamlatdar has not taken any action on this request of the petitioner. In view of these events it can hardly be said that the petitioner could have approached the competent court for getting the stay order against order suspending his licence more particularly when he himself was eager as early as on 2.9.1998 that his licence may be cancelled. The grounds of detention show that the petitioner was a licence holder. He could not have purchased crude, kerosene or volatile kerosene from open market nor could have sold the same in black market after suspension of licence. The apprehension in the mind of the detaining authority that immediate prevention of black marketing activity of the petitioner could be secured only by passing order for preventive detention is nothing, but his imagination. No doubt if alternative remedies were under consideration before the detaining authority and were actually considered this court will not interfere in subjective satisfaction of the detaining authority. However, if the detaining authority has considered the alternative remedy in apparently, arbitrary manner without considering how a kerosene or purified kerosene to sell it in black market it would not be in the interest of justice for this Court to put a blank seal to such arbitrary subjective satisfaction of the detaining authority. On the face of the record the subjective satisfaction of the detaining authority on this point suffers from non application of mind to the material on record and is certainly arbitrary."

#. Having considered aspects emerging from the record available to the Court including the documents supplied to the petitioner and grounds of detention conveyed to the present petitioner along with the order under challenge, this Court finds that there is ample force in submissions of Mr. Joshi. So without entering into merits in detail of the other grounds raised in the present

case, it is possible for this Court to allow this petition and order of detention requires to be held bad and therefore, should be quashed.

#. Hence, the petition succeeds and the same is allowed. The order of detention being No.PR.V / ATK / RG.No. 6/ 2004 dated 1.9.2004 dated 1.9.2004 passed by the District Magistrate, Surat is vitiated and the same is hereby quashed and set aside. The detenu Subhash Dinmohammed Lakhani who has been detained at District Jail, Junagadh be set at liberty forthwith if he is not required in any other case.

Rule is made absolute accordingly. No order as to costs.

Direct Service is permitted.

Date : 9.12.2004 [C.K.Buch, J.]

#kailash#